509.

SUPREME COURT OF THE UNITED STATES.

No. 78.

NATHAN CARR, ET AL, APPELLANTS,

VERSUS

JOSEPH HOXSIE.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF RHODE ISLAND.

RHODE ISLAND DISTRICT, *sc.*

Clerk's Office, Circuit Court,

At Providence, January 4th, 1838.

I hereby certify that it appears, from the records of said court, that, at the June term thereof, A. D. 1834, a decree was rendered in the cause in equity, wherein Joseph Hoxsie is complainant, and Nathan Carr, Jesse Carr, and others, are defendants. It also appears that, from said decree an appeal was taken to the Supreme Court of the United States, to be holden at Washington, on the second Monday in January, A. D. 1835.

I further certify that, at a circuit court of the United States holden at Providence, within and for the Rhode Island district, on the fifteenth day of November, A. D. 1837, a certificate was produced and read to the said court, by the said complainant, in the words and figures following, to wit:

"No. 14.

"Supreme Court of the United States, January term, 1837.

"NATHAN CARR and others, app'lts, } On appeal from the Circuit
"*vs.* } Court of the United States for
"JOSEPH HOXSIE. } the district of Rhode Island.

"On motion of Mr. Greene, of counsel for the appellees, it is now "here ordered, adjudged, and decreed by this court, that this appeal "be, and the same is, hereby dismissed. Jan. 16.

"I, William Thomas Carroll, clerk of the Supreme Court of the "United States, do hereby certify that the above is a true copy of "the order and decree of said Supreme Court, made in said cause, "at January term, eighteen hundred and thirty-seven. Extracted "from the minutes of said Supreme Court.

"In testimony whereof, I hereunto subscribe my name, and affix "the seal of said Supreme Court, at the city of Washington, this "tenth day of July, in the year of our Lord one thousand eight hun-"dred and thirty-seven.

[L. S.] "WM. THOS. CARROLL,
"*Clerk of the Supreme Court of the United States.*

Whereupon, on motion of the said complainant, such further proceedings were then and there had in said cause, that the said court proceeded to render the following decree, to wit:

"UNITED STATES,

"*Rhode Island District, sc.*

"Circuit Court, November term, 1837.

"*In Chancery.*

"Between Joseph Hoxsie, complainant on the original bill, and "Nathan Carr and others, respondents.

"And between Joseph Hoxsie, complainant on the supplemental "bill, and Amon Hopkins and others, respondents.

"Whereas, at the June term, A. D. 1834, of this court, a decree "was entered in the above cause, which is as follows:

"UNITED STATES,

"Circuit Court, June term, A. D. 1834.

"*Rhode Island District, sc.*

"*In Chancery.*

"Between Joseph Hoxsie, complainant on the original bill, and "Nathan Carr and others, respondents.

"And between Joseph Hoxsie, complainant on the supplemental "bill, and Amon Hopkins and others, respondents.

"This cause came on to be heard, upon the original and supplemental bill, for further order and decree thereon; and the master's report made in the above cause, upon the original and supplemental bill, which report is dated June 15th, A. D. 1834, and is signed by Thomas Burgess, Esq. appointed a master in chancery in said cause by this court, having been read and filed, and no exception being made thereto, it is ordered that said report, and all the matters and things therein contained, do stand confirmed.

"And it appearing, in and by said report, that the said thirty-seven acre lot, and the Picker lot, in the pleadings and in said report mentioned, were the co-partnership property of the said West Greenwich Manufacturing Company, at the time of the dissolution of said firm; it is further ordered, adjudged, and decreed, that the one undivided half part of said thirty-seven acre lot, and the one undivided eighth part of said Picker lot, in the pleadings and in said report mentioned, and which were conveyed to the said Nathan and Jesse Carr by the said Simon Reynolds, are justly chargeable with the debts due from the said West Greenwich Manufacturing Company, which still remain unpaid, and with the amount of the debts of said Company, which have been paid by said Hoxsie, over and above what he was bound to pay, as a partner in said firm, and over and above what said Hoxsie is indebted to said firm, for company property or proceeds, use or rents, of the said company property, beyond his due proportion, as joint owner, or in any other way.

"It is also ordered and decreed, as was ordered and decreed at the June term, A. D. 1833, of this court, that the one undivided half part of said three acre lot, in the pleadings mentioned, on which said Factory and other buildings stand, and of the dams, sluices, and raceways, appurtenant to said Factory, and which was also conveyed to the said Nathan and Jesse Carr by the said Simon Reynolds, are justly chargeable with the debts due from the said West Greenwich Manufacturing Company, which still remain unpaid, and with the amount of the debts of said Company, which have been paid by said Hoxsie, over and above what he, as a partner in said firm, was bound to pay, and over and above what said Hoxsie is indebted to said Company, for company property or proceeds, use or rents, of said company property, beyond his due proportion, as joint owner, or in

any other manner; and the same, together with the undivided half part of said thirty-seven acre lot, and the said undivided eighth part of said Picker lot, ought to be sold, and the proceeds applied, first, to pay the debt due said Richard W. Greene, assignee of Thornton and Lothrop, from said Company; secondly, the residue to pay said Hoxsie the amount of debts due from said Company, which have been paid by said Hoxsie, over and above what he, as a partner in said firm, was bound to pay, and over and above what said Hoxsie is indebted to said Company, for company property or proceeds, use or rents, of said Company's property, beyond his due proportion, as joint owner, or in any other manner; thirdly, to pay the residue of the debts due from the said Company, which remain unpaid, and of which a schedule is annexed to the said report: and it is hereby further ordered and decreed, that the same lands and real estate, so chargeable, be sold at public auction, to the highest bidder, on or before the first day of November next, or so much thereof as may be necessary, for the purposes aforesaid, by a master, to be appointed by this court, he giving three weeks' previous notice of such sale, in one or more of the newspapers printed in the city of Providence, in said Rhode Island district; that said master execute, in due form of law, a proper deed or deeds to the purchaser or purchasers thereof; that he bring the moneys arising from such sale into the registry of this court, and that said master report his proceedings herein with all convenient speed. It is further ordered and decreed, that the clerk of this court pay out of said proceeds, as follows: first, to the said Richard W. Greene, assignee of Thornton and Lothrop, the amount of the debts which appears, in and by said report, to be due to him from said Company, being eleven hundred and sixty-five dollars, and eighty-four cents, or to such person or persons as the said Richard W. may have assigned and appointed to receive the said debts; second, to Joseph Hoxsie the amount which it appears, in and by said report, he has paid, of debts due from said Company, over and above what he, as a partner in said firm, was bound to pay, and over and above what he is indebted to said Company, for company property or proceeds, use or rents, of said Company's property, beyond his due proportion, as joint owner, or in any other way, and over and above what he is indebted to said Simon Reynolds, for his, said Hoxsie's, proportion of any debt due said Simon from said Company; the sum to be paid said Hoxsie, as aforesaid, being five hundred and thirty-three dollars, and forty-five cents, if the proceeds shall be sufficient to pay all the Company debts; and that the residue be and remain in the registry of the court until further order, so as to enable and allow the creditors of the said Company to come in and receive their debts respectively thereout, upon petition to the court, or otherwise, to enable the court to cause a due discharge to be made out of such proceeds, of all the debts of such creditors. And all further orders and decrees are reserved, until the sale aforesaid shall be completed, and the proceeds brought into the registry of the court.

"Let the foregoing decree be filed, as of June term, 1834, circuit court, Rhode Island.

"JOSEPH STORY,

"One of the Justices of the Supreme Court of U. S.

"July, 1834.

"To BENJAMIN COWELL, Esq.

"And whereas, an appeal was taken from said decree to the January term, A. D. 1835, of the Supreme Court of the United States, which appeal was dismissed by said Supreme Court, at the January term, A. D. 1837, of said court, which appears, from the certificate of the clerk of said court, under the seal thereof, a copy of which certificate is hereunto annexed.

"It is therefore ordered, adjudged, and decreed by the court, upon motion of the counsel for the plaintiff in said cause, that said original decree be executed, and that the one undivided half part of the three acre lot, in the pleadings mentioned, on which said Factory and other buildings stand, and of the dams, sluices, and raceways, appurtenant to said Factory, and which were conveyed to said Nathan and Jesse Carr by said Simon Reynolds, and the one undivided half part of said thirty-seven acre lot, in the pleadings mentioned, and one undivided eighth part of said Picker lot, in the pleadings mentioned, be sold at public auction, to the highest bidder, on the first Tuesday of May next, or so much thereof as may be necessary, for the purposes in said original decree mentioned, and that Thomas Burgess be a master for such purpose, and that said master give three weeks' notice of such sale, in one or more newspapers printed in the city of Providence, in said Rhode Island district, and that said master execute, in due form of law, a proper deed or deeds to the purchaser or purchasers thereof, and that he bring the proceeds of such sale into the registry of this court, to be paid and applied, as is ordered in and by said original decree.

"And that all further orders and decrees are reserved, until the sale aforesaid shall be completed, and the proceeds brought into the registry of this court.

"November term, 1837, 5th day.

"Ordered to be entered as a decree of this court.

"J. T. PITMAN, *Clerk*.

From which decree the said respondents prayed for an appeal to the Supreme Court of the United States, and it was ordered by the court here, that the appeal be granted, on bond being filed in the clerk's office, with sufficient surety, to the satisfaction of the district judge, in the sum of two hundred dollars, on or before the fifteenth day of December, A. D. 1837.

I further certify that, on the fourteenth day of December, A. D. 1837, in compliance with the foregoing decretal order, a bond was filed in the said clerk's office, and approved by the district judge, in the words and figures following, to wit:

"Know all men, by these presents, that we, Nathan Carr, of West Greenwich, in the county of Kent, and State of Rhode Island, as principal, and Jesse Carr, of Exeter, in the county of Washington, and State of Rhode Island, and William Pabodie, of Providence, in the county of Providence, and State of Rhode Island, as sureties, are holden and firmly bound unto Joseph Hoxsie, of Seekonk, in the county of Bristol, and Commonwealth of Massachusetts, in the sum of two hundred dollars, to be paid to the said Joseph Hoxsie, his executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

"Sealed with our seals, and dated this second day of December, in the year of our Lord one thousand eight hundred and thirty-seven.

"The condition of the above obligation is such, that whereas, at the November term of the circuit court of the United States for the first circuit, begun and holden at Providence, within and for the Rhode Island district, on the fifteenth day of November, A. D. 1837, a decree of sale was rendered and pronounced by said court, at said term, in a certain suit or complaint in equity, wherein the said Joseph Hoxsie, of Seekonk, in the county of Bristol, and State of Massachusetts, manufacturer, is complainant, and the said Nathan Carr, and Simon Reynolds, and Jonathan Nichols, all of West Greenwich, in said Rhode Island district, Jesse Carr, of Exeter, in said district, and Richard W. Greene, of Providence, in said district, are respondents; from which decree the said Nathan, Simon, Jonathan, and Jesse, have appealed to the Supreme Court of the United States, next to be holden at the city of Washington, on the second Monday of January next, A. D. 1838. Now, therefore, if the said Nathan, Simon, Jonathan, and Jesse, or either of them, shall prosecute their said appeal before said Supreme Court with effect, or in default thereof, shall well and truly pay all such costs as shall be adjudged for them to pay by said Supreme Court, or by said circuit court, by reason of said appeal, then the before written obligation to be void, otherwise to remain in full force and virtue.

NATHAN CARR. [SEAL.]
WM. PABODIE. [SEAL.]
JESSE CARR. [SEAL.]

"Signed, sealed, and delivered, in presence of—

"Witnesses to signature of Nathan Carr:
"JEREMIAH B. AUSTIN.
"CALEB ARNOLD.

"Witnesses to signatures of Jesse Carr and William Pabodie:
"BURRINGTON ANTHONY.
"JOHN T. PITMAN.

Approved:

JOHN PITMAN, *Distr. Judge.*

In testimony whereof, I hereunto subscribe my name, and affix the seal of said circuit court, at Providence, this fourth day of January, in the year of our Lord one thousand eight hundred and thirty-eight.

[L. S.] JOHN T. PITMAN, *Clerk.*

Fees—Seal and certificate,	1 50
Copy,	2 30
	$3 80

RHODE ISLAND DISTRICT, *sc.*

Clerk's Office, Circuit Court,

At Providence, Janaary 4th, 1838.

I hereby certify that it appears, from the records of said court, that, at the June term thereof, A. D. 1834, a decree was rendered in the cause in equity, wherein Joseph Hoxsie is complainant, and Nathan Carr, Jesse Carr, and others, are respondents. It also appears that, from said decree, an appeal was prayed for to the Supreme Court of the United States, which said appeal was granted and allowed, a bond being given, in the sum of two hundred dollars, satisfactory to, and approved of, by the district judge of the Rhode Island district.

I also certify, that a certificate was received at the said clerk's office of said circuit court, of which certificate the following is a true copy:

"No. 14.

"Supreme Court of the United States, January term, 1837.

"NATHAN CARR, and others, app'lts	On appeal from the Circuit
"*vs.*	Court of the United States for
"JOSEPH HOXSIE.	the District of Rhode Island.

"On motion of Mr. Greene, of counsel for the appellee, it is now here ordered, adjudged, and decreed by this court, that this appeal be, and the same is, hereby dismissed. Jan'y 16.

"I, William Thomas Carroll, clerk of the Supreme Court of the United States, do hereby certify, that the above is a true copy of the order and decree of said Supreme Court, made in said cause, at January term, eighteen hundred and thirty-seven.

"Extracted from the minutes of said Supreme Court.

"In testimony whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court, at the city of Washington, this tenth day of July, in the year of our Lord one thousand eight hundred and thirty-seven.

[L. S.] "WM. THOS. CARROLL,

"*Clerk of the Supreme Court of the United States.*

Whereupon, at the November term, A. D. 1837, of said circuit court, holden at Providence, within and for said Rhode Island district, the said Nathan Carr, for himself and the other respondents, made petition as follows:

"To the circuit court of the United States for the Rhode Island district, at the November term, A. D. 1837.

"Respectfully represents the subscriber, your petitioner, who, as well for himself as the other respondents to the bill in equity, Joseph Hoxsie, complainant, against Nathan Carr, and others, that final judgment was rendered in said case, at the June term of this court, A. D. 1834, from which judgment the respondents appealed to the Supreme Court of the United States, and entered their appeal according to law. At the January term, A. D. 1837, of said court, their appeal was dismissed, in consequence of a misunderstanding between the counsel of your petitioners, whereby they lost the benefit of a trial in said court. They therefore ask your honors that they may be allowed to enter a new appeal in said case.

"And they, as in duty bound, will pray.

"NATHAN CARR,
"*For Self and Respondents.*

"Providence, Nov'r 18th, 1837.

On consideration whereof, the court did order and decree that said appeal be allowed, on bond being given, in the sum of five hundred dollars, with one or more sureties, to the satisfaction of the district judge, on or before the fifteenth day of December.

I also certify that, on the fourteenth day of December, a bond was filed of record in the said clerk's office, and approved by the district judge, of which the following is a true copy:

"Know all men, by these presents, that we, Nathan Carr, of West Greenwich, in the county of Kent, and State of Rhode Island, as principal, and Jesse Carr, of Exeter, in the county of Washington, and State of Rhode Island, and William Pabodie, of Providence, in the county of Providence, and State of Rhode Island, as sureties, are holden and firmly bound unto Joseph Hoxsie, of Seekonk, in the county of Bristol, and Commonwealth of Massachusetts, in the sum of five hundred dollars, to be paid to the said Joseph Hoxsie, his executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

"Sealed with our seals, and dated this second day of December, in the year of our Lord one thousand eight hundredand thirty-seven.

"The condition of the above obligation is such, that whereas, at the June term of the circuit court of the United States for the first circuit, begun and holden at Newport, within and for the Rhode Island district, on the sixteenth day of June, A. D. 1834, a final decree was rendered and pronounced by said court, at said term, in a certain suit or complaint in equity, wherein the said Joseph Hoxsie is

513.

complainant, and the said Nathan Carr, together with Simon Reynolds and Jonathan Nichols, of West Greenwich, in said Rhode Island district, Jesse Carr, of Exeter, in said district, and Richard W. Greene, of Providence, in said district, are respondents, from which decree the said Nathan, Simon, Jonathan, and Jesse, have appealed to the Supreme Court of the United States, next to be holden at the city of Washington, on the second Monday of January next. Now, therefore, if the said Nathan, Simon, Jonathan, and Jesse, or either of them, shall prosecute their said appeal before said Supreme Court with effect, or in default thereof, shall well and truly pay all such costs as shall be adjudged for them to pay by said Supreme Court, or by said circuit court, by reason of said appeal, then the before written obligation to be void, otherwise to remain in full force and virtue.

"NATHAN CARR. [SEAL.]
"WM. PABODIE. [SEAL.]
"JESSE CARR. [SEAL.]

"Signed, sealed, and delivered, in presence of—

"Witnesses to signature of Nathan Carr:
"JEREMIAH B. AUSTIN.
"CALEB ARNOLD.

"Witnesses to signatures of Jesse Carr and William Pabodie:
"BURRINGTON ANTHONY.
"JOHN T. PITMAN.

Approved:

JOHN PITMAN, *Distr. Judge.*

In testimony whereof, I hereunto subscribe my name, and affix the seal of said circuit court, at Providence, this fourth day of January, in the year of our Lord one thousand eight hundred and thirty-eight.

[L. S.] JOHN T. PITMAN, *Clerk.*

Fees—Seal and certificate, - - -	1 50
Copy, - - - -	1 00
	$2 50

SUPREME COURT OF THE UNITED STATES.

No. 79.

WILLIAM WALLLACE, PLAINTIFF IN ERROR,

VERSUS

CORRY McCONNELL.

IN ERROR TO THE DISTRICT COURT UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

Pleas had before the Hon. the district court of the United States, at a term thereof begun and held in and for the Southern District of Alabama, on the second Monday of December, in the year of our Lord one thousand eight hundred and thirty-six.

Be it remembered, that heretofore, to wit, on the second day of April, in the year of our Lord one thousand eight hundred and thirty-six, Corry McConnell sued out of the clerk's office of the court aforesaid, his writ of capias and respondendum against William Wallace, in the words and figures following, to wit:

United States of America, district court of the United States for the Southern District of Alabama:

The President of the United States, to the marshal of said District, *greeting:*

You are hereby commanded to take the body of William Wallace, who is a citizen of the State of Alabama, and him safely keep, so that you have him before the Hon. the judge of the said court, at the place of holding said court at Mobile, on the first Monday of May next, to answer unto Corry McConnell, who is a citizen of the State of New York, in a plea that he render unto him the sum of forty-eight hundred and eighty dollars and thirty-nine cents, which to him he owes, and from him unjustly detains to the damage of the said plaintiff, five thousand dollars. Herein fail not, and have you then and there this writ.

Witness the Hon. William Crawford, Judge of the said court, and the seal of said court, this second Monday of December, in the year of our Lord one thousand eight hundred and thirty-five.

Issued the second day of April, in the year of our Lord one thousand eight hundred and thirty-six.

Attest: DAVID FILES,
Clerk Southern District of Alabama.

NASHVILLE, *May 10th*, 1832.

$4880 39.

Three years and two months after date, I promise to pay Corry McConnell, or order, at the office of discount and deposite of the Bank of the United States, at Nashville, four thousand eight hundred and eighty dollars thirty-nine cents, value received. Witness my hand and seal.

(Signed) W. WALLACE. [SEAL.]

This action is founded upon a promissory note, under seal of which the above is a copy.

GAYLE & VANDEGRAFF,
Plaintiff's Attorneys.

Received and served April 7th, 1836.

ROBT. L. CRAWFORD,
U. S. Marshal.

And at a term of said district court, begun and held in and for the said Southern District of Alabama, on the first Monday of May, in the year of our Lord one thousand eight hundred and thirty-six, the plaintiff filed the following declaration, to wit:

United States of America, district court of the United States for the Southern District of Alabama, May term, 1836.

Corry McConnell, who is a citizen of the State of New York, by attorney complains of William Wallace, who is a citizen of the State of Alabama, in custody, &c. of a plea that he render unto him the sum of forty-eight hundred and eighty dollars and thirty-nine cents, which to him he owes, and from him unjustly detains; for that whereas, heretofore, to wit, on the tenth day of May, in the year 1832, at Nashville, to wit, in the District aforesaid, the said defendant, by his certain writing, obligatory subscribed with his name, and sealed with his seal, and to the said district court now here shown, the date whereof is the same day and year aforesaid, promise to pay to the said plaintiff, or order, three years and two months after the date thereof, the sum of four thousand eight hundred and eighty dollars and thirty-nine cents, at the office of discount and deposite of the Bank of the United States, at Nashville, for value received. By means whereof the said defendant, then and there, became liable to pay the said plaintiff the said sum of money, in the said writing obligatory specified, according to the tenor and effect of the said writing obligatory; and the said plaintiff in fact further saith, that although according to the tenor and effect

of the said writing obligatory, the said sum of money therein specified has been long since due, and payable to the said plaintiff, yet nevertheless, the said defendant, although often requested so to do, did not, nor would pay the said sum of forty-eight hundred and eighty dollars and thirty-nine cents, in the said writing obligatory specified, or any part of thereof, to the said plaintiff, in manner aforesaid, or otherwise however; but hath hitherto neglected and refused so to do, whereby an action hath accrued to the said plaintiff, to demand and have of, and from, the said defendant, the said sum of forty-eight hundred and eighty dollars and thirty-nine cents, in the said writing obligatory specified, together with his damages, amount of the sum of five thousand dollars, occasioned by the detention of the same; and therefore he brings his suit, &c.

GAYLE & VANDEGRAFF.

And at a term of the said district court, begun and held in and for said Southern District of Alabama, on the first Monday of May, in the year of our Lord one thousand eight hundred and thirty-six, the said defendant filed the following plea:

CORRY MCCONNELL
vs.
WM. WALLACE. } District Court, May term, 1836.

And the said defendants, comes and defend the wrong and injury, when, &c. and says, the plaintiffs, their action against him in the behalf to have and maintain, ought not, because he says that he has well and truly paid and satisfied to the said plaintiffs, the sum of money demanded of him by the writ and declaration, in this behalf, before the issuance of said writ; and this he is ready to verify, wherefore he prays judgment, &c.

STEWART & THORNTON,
Plaintiff's Att.

CORRY MCCONNELL
vs.
WM. WALLACE. } May term, 1836.

And the said plaintiff, Corry McConnell, by his attorney, says, that the said defendant, the said William Wallace, did not well *well* and truly pay the said sum of money by him, the said plaintiff, above thereof demanded of him, the said defendant, in manner and form as he, the said defendant, hath above, in his plea, alleged; and of this he, the said plaintiff, puts himself upon the country, and the defendant likewise.

GAYLE & VAN DEGRAFF, *Pro. que.*
STEWART & THORNTON.

And at a term of the court aforesaid, begun and held in and for the said Southern District of Alabama, on the second Monday of Decem-

ber, in the year of our Lord one thousand eight hundred and thirty-six, the said defendant filed the following plea of puis darrien continuance, to wit:

CORRY MCCONNELL } District Court of the UuitedStates, South-
vs. } ern District of Alabama, December
WM. WALLACE. } term, 1836.

And now, at this day, that is to say, at the term of this court held on the second Monday in December, in the year 1836, until which term the plea aforesaid was last continued, from the term of said court held in the first Monday of May, 1836, comes the said William Wallace, defendant, by his attorney, and also comes the said Corry McConnell, plaintiff, by his attorney: and the said William Wallace, defendant, saith, that as to the sum of forty two hundred and four dollars, part and parcel of the sum by the said plaintiff in said declaration demanded, he, the said plaintiff, ought not further to have and maintain his aforesaid action therefore, against him; because he saith, that after the said last continuance of this cause, that is to say, after the term of this court held on the first Monday of May last, and before the December term aforesaid, to wit, on the eighth day of June, in the year 1836, at Mobile, to wit, in the District aforesaid, one William J. Blocker, John R. Blocker, and Benjamin Horner, merchants, trading under the name of Horner, Blocker & Co. by William J. Blocker, one of said firm, in behalf of himself and his copartner, caused to be sued out a certain writ of original attachment against the said Corry McConnell, for the sum of forty-two hundred and four dollars; and which said writ was issued by Benjamin Wilkins, a justice of the peace of Mobile county, on the said eighth day of June, in the year 1836, and was directed to the sheriff of Mobile county, and was made returnable to the county court of Mobile county, which was held on the second Monday in June, 1836. And the said defendant further avers, the *the* said plaintiffs, in the said attachment, were at the time of suing out the same, residents of the State of Alabama; that the said Corry McConnell was a non-resident, and citzen of the State of Newark, and that the said plaintiffs did comply with the requisites of the statute, in such cases made and provided, by giving bond and security, and filed affidavit, whereby it is shown that the said justice and the said county court had jurisdiction of the said attachment, and that the said county court could lawfully hear and determine the same. And the said defendant further saith, that in said original attachment, such proceedings were had; that he, the said William Wallace, was on the said eighth day of June, 1836, summoned as a garnishee, by the sheriff of Mobile county, and required to appear before the said county court, and answer, on oath, what he was indebted to said Corry McConnell. And the said William Wallace, defendant,further saith, that, in obedience to the said summons of garnishment, he, the said William, did appear before the said county court of Mobile, at the said term of the said county court held on the second Monday iu June, 1836, before the judge of said court then sitting, and was in said suit

of attachment between the said Horner, Blocker & Co., plaintiffs, and Corry McConnell, defendant, examined on oath, touching his indebtedness to the said Corry McCounell; whereupon, he did declare, on oath, that he did executed to the said McConnell, the note for the sum of $4,880, on which the said plaintiffs in this suit hath declared, that he did pay, on the said note, to said McConnell, on the 24th day of September, 1833, the sum of $372 34, and that the remainder of said note was due by said Wallace to said McConnell, &c. And the said defendant further saith, that in the said attachment by said court, at the said June term thereof, it was ordered that the proceedings against said McConnell be stayed for six months, and that notice be given to the said McConnell of the pendency of said attachment, by letter, directed to New York; the said McConnell being shewn to be a resident of the State of New York. And the said defendant, Wallace, further saith, that in the said attachment, and upon the said writ of garnisheement, the said court at the said June term, then sitting, did make the further order following, to wit:

HORNER, BLOCKER & Co.
vs. } 190.
CORRY MCCONNELL.

It appearing, to the satisfaction of the court, that William Wallace has been duly summoned as a garnishee, and he having admitted an indebtedness to said defendant, to an amount greater than the amount sued for in the above entitled cause, it is considered by the court, that said plaintiffs do recover from said garnishee, the sum of forty-two hundred and four dollars, the amount sued for in said case, together with the cost thereof, and that all proceedings against said garnishee be stayed until the final disposition of said case; wherefore the said cause was, in said county court, at said June term, continued by said court, as well against the said McConnell as against the said Wallace, till the next term thereof, to be held in due course of law, that is to say, on the second Monday of February, in the year 1837. All which said proceedings in the said county court, in which the said plea still remains pending and undetermined, are still in full force, and not reversed, vacated, or otherwise set aside, as by the record and proceedings in said court, still remaining of record, will more fully and at large appear. And that he, the said defendant, is ready to verify; wherefore, he prays judgment, if the said plaintiffs ought further to have or maintain his said action therefore, against him, this defendant, as to the sum of $4,204 00, parcel of the sum by the said plaintiffs above demanded, &c.

STEWART & THORNTON,
Attorneys for Wm. Wallace.

Personally appeared in open court, on this 15th day of December, 1836, George N. Stewart, who, being duly sworn, deposeth and saith, that the above plea is true, in substance and in fact.

GEORGE N. STEWART.

Sworn and subscribed the day and year aforesaid.

DAVID FILES,
Clerk.

And at the term last aforesaid, of the court aforesaid, the said plaintiffs filed the following demurrer to said defendant's plea, of puis darien continuance, to wit:

CORRY MCCONNELL
vs.
WILLIAM WALLACE.

District court of the United States for the southern district of Alabama, December term, 1836.

And now at this day, to wit, at the term of this court held on the second Monday in December, in the year 1836, comes also the said Corry McConnell, by his attorney, and prays that the court now here do render judgment against the said William Wallace, and in favor of him, the said Corry McConnell, for the sum of six hundred and seventy-six, 39-100 dollars, together with his damage occasioned by the detention thereof, parcel of the debt by him, the said Corry McConnell, in his said declaration above demanded, and as to which he, the said William Wallace, in court now here remains, as is wholly undefended; and as to the said plea of him, the said William Wallace, by him above pleaded, as of this present term of the said court, and since the last continuance of this cause, he, the said Corry McConnell, says, that he ought not, by reason of any thing alleged in said plea, to be barred or precluded from having and maintaining his said action thereof, against him, the said William Wallace, as to the said sum of forty-two hundred and four dollars, in said plea mentioned, and being the residue of the said debt, by him, the said Corry McConnell, in his said declaration above demanded, because he, the said Corry McConnell says, that the said plea, and the matters and things therein alleged, and set forth in manner and form as the same are therein pleaded, are not sufficient in law to bar or preclude him, the said Corry McConnell, from having and maintaining his aforesaid action thereof, against him the said William Wallace, as to the said sum of forty-two hundred and four dollars, in the said plea mentioned as aforesaid, and that he, the said Corry McConnell, is not bound by the law of the land, to answer the same, and this he is ready to verify; wherefore, he, the said Corry McConnell, prays judgment, &c.

GAYLE & VAN DE GRAFF,
Pro. que.

Joinder in the demurrer,

STEWART & THORNTON,
Atty. for. plff.

517.

And at another day, to wit, on the 21st day of December, in the year of our Lord one thousand eight hundred and thirty-six, being a day of the term of said district court, begun and held in and for the said southern district of Alabama, on the second Monday of December, in the year of our Lord one thousand eight hundred and thirty-six, came the same parties, as follows, to wit:

CORRY MCCONNELL
vs.
WM. WALLACE.

This day came the parties, by their attorneys, and thereupon the matter of law, arising upon plaintiff's demurrer todefendant's plea of puis darrien continuance, as to the said sum of four thousand two hundred and five dollars, being argued by counsel, it seems to the court that said plea, as to the said sum of forty-two hundred and five dollars, and the allegations therein contained, are not sufficient in law to bar the said plaintiff from having and maintaining his aforesaid action thereof, against him, as to the said last sum of money; whereupon, it is ordered by the court that said demurrer be sustained, but as to the sum of six hundred and seventy-five dollars, thirty-nine cents, the residue of said plaintiff's debt, in his declaration mentioned, this day came the plaintiff, by his attorney, and the said defendant being solemnly called, came not, but wholly made default, as to the said last mentioned sum, whereby the said plaintiff, therein against him, remains altogether undefended. It is therefore considered by the court, that the said Corry McConnell, plaintiff, do recover against the said William Wallace, defendant, the said sum of four thousand eight hundred and eighty dollars and thirty-nine cents, his debt aforesaid; and also the further sum of three hundred and ninety-four dollars, the interest thereon, assessed by the clerk of this court by way of damages, for the detention of the same, together with his cost in this cause, the plaintiffs remits to the defendant the sum of three hundred and fifty-one dollars, twenty-eight cents.

In this cause the court decided, that the plea of puis darrien continuance, was a waiver of the previous plea pleaded by the defendant; there was no default of the defendant, further than his abandonment, under the decision of the court, of his first plea. In this cause the defendant moved the court to stay proceedings in the said cause, until the final decision of the county court of Mobile county, upon the attachment of Horner, Blocker, & Co. which motion was overruled.

I, David Files, clerk of the district court of the United States, for the southern district of Alabama, do hereby certify, that the above and foregoing seven pages, contain a full, true, and perfect exemplification of the record and proceedings in a certain cause, lately determined in the court aforesaid, wherein Corry McConnell was plaintiff, and William Wallace was defendant.

In testimony whereof, at my office in the city of Mobile, I have hereunto set my hand, and affixed the seal of the said district court, this ninth day of January, in the year of our Lord one thousand eight hundred and thirty-seven.

[SEAL.] DAVID FILES,
Clerk.

UNITED STATES OF AMERICA.
District Court of the United States for the Southern District of Alabama.

The President of the United States to the clerk of the district court of the United States, for the southern district of Alabama, greeting:

Whereas, at a term of the district court of the United States, begun and held in and for the southern district of Alabama, on the second Monday in December, in the year of one Lord our thousand eight hundred and thirty-six, by the consideration of the said court in a certain action of debt, one Corry McConnell recovered against one William Wallace, the sum of forty-nine hundred and twenty-three dollars, twenty-eight cents, for debt and interest, besides costs; and because in the records and proceedings in said cause, and in the rendition of judgment therein, manifest error has intervened to the great damages of the said William Wallace, as by his complaint has been stated, and as it is right that the error, if any there be, should be corrected, and justice done the said parties in this behalf.

You are hereby commanded, that the record and proceedings, with all things therein relating to the Supreme Court of the United States, to be held at the city of Washington, on the second Monday of January next, under your seal you send, together with this writ, that the record and proceedings aforesaid, being inspected, the said Supreme Court may further cause to be done therein, for the correcting said error, what of right, and according to law what ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the second Monday of January, in the year of our Lord one thousand eight hundred and thirty-seven.

Issued the ninth day of January, in the year of our Lord one thousand eight hundred and thirty-seven.

[SEAL.] DAVID FILES.

Received a copy of the above, and error, January 9th, 1837, and served it on W. S. Vardegraff, one of plaintiff's counsel, January 10th, 1837.

ROBT. L. CRAWFORD,
U. S. M.

UNITED STATES OF AMERICA.

District Court of the United States for the Southern District of Alabama.

CORRY MCCONNELL. vs. WILLIAM WALLACE. } Action of debt.

Know all men by these presents, that we, William Wallace, James B. Wallace, and Wm. R. Smith, are held and firmly bound unto the said Corry McConnell, in the sum of nine thousand eight hundred and forty-six dollars, fifty-six cents, for the payment of which, well and truly to be made, we bind ourselves and each of us, and our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at Mobile this ninth day of January, in the year of our Lord one thousand eight hundred and thirty-seven.

Whereas, the said William Wallace has sued out a writ of error to the Supreme Court of the United States, returnable at the next term thereof, to reverse a judgment rendered by the district court of the United States, for the district aforesaid, in favor of the said Corry McConnell against the said William Wallace, for the sum of forty-nine hundred and twenty-three, 28-100 dollars.

Now, therefore, the condition of this obligation is such, that if the above bound William Wallace shall prosecute his said writ of error to effect, and answer all debt, damages, and costs, if he shall fail to make his plea good, then this obligation shall be void, otherwise to remain in full force and virtue.

(Signed)

W. WALLACE. [SEAL.]
JAMES B. WALLACE. [SRAL.]
W. R. SMITH. [SEAL.]

Signed, sealed, and executed, and each security justified, under oath, to worth ten thousand dollars, before

DAVID FILES,
Clerk Lou. Dis.

The above bond is approved, and it will operate as a supercedeas, on the issuing of a writ of error.

(Signed)

WM. CRAWFORD,
Judge.

I, David Files, clerk of the United States for the southern district of Alabama, do hereby certify the above to be a true copy of the bond, filed by W. Wallace, in a certain suit lately determined before the district court of the United States, for the southern district of Alabama, wherein one Corry McConnell was plaintiff, and the said William Wallace was defendant.